

**JOINT LEGISLATIVE SUNSET  
REVIEW COMMITTEE FINDINGS AND  
RECOMMENDATIONS**

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**Review and Evaluation of the  
Board of Behavioral Sciences**

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**Report to the  
Department of Consumer Affairs**

**APRIL, 1998**

# **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE**

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# IDENTIFIED ISSUES, RECOMMENDATIONS, AND FINAL ACTION OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REGARDING THE BOARD OF BEHAVIORAL SCIENCES

**ISSUE #1.** Should the licensing of MFCC's (marriage, family and child counselors), LCSW's (licensed clinical social workers), and LEP's (licensed educational psychologists) be continued?

**Recommendation:** *Both the Department and Committee staff recommended the continued licensure of MFCC's (marriage, family and child counselors), LCSW's (licensed clinical social workers), and LEP's (licensed educational psychologists).*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** The Board of Behavioral Sciences regulates the following Master's degree-level professionals: MFCC, approximately 23,000 active licensees; LCSW, approximately 13,600 active licensees; LEP's, approximately 1600 active licensees.

As indicated by the Board, the public is entitled to demand that the professionals in these fields follow high standards of behavior. The mental health professional increasingly serves the public. For example, they are often called to situations that directly affect consumers when they are in their most vulnerable state, by providing service to, and with emergency response teams, hostage negotiation teams, child protective services, juvenile courts, schools, prisons, and adult/child abuse agencies.

Because of the possibility of serious harm to clients, the public expects that mental health professionals be regulated, monitored, and held accountable for any type of negligent practice. Because mental health professionals have access to confidential client information, the public expects that regulatory authorities will remove dishonest or incompetent practitioners.

The public has a right to expect that professionals will be educated, monitored, and held accountable. The professionals also have a stake in promoting a safe and educated profession and in supporting the public's demand that practitioners be ethical and honest. The regulatory program is needed because of the fact that harm to clients can occur and can be severe. Possible harm includes physical injury or death of the client or others, and the possible escalation of dysfunction and distress.

**ISSUE #2.** Should an independent Board of Behavioral Sciences be continued, or should its operations and functions be assumed by the Department of Consumer Affairs?

**Recommendation:** *Both the Department and Committee staff recommended that the Board of Behavioral Sciences be retained as the independent state agency to regulate and license MFCC's, LCSW's and LEP's. Committee staff recommends that the sunset date of the Board be extended for six years (to July 1, 2005). However, the Legislature should continue to monitor the Board's enforcement and oral examination programs.*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** The Board of Behavioral Sciences appears, in most respects, to be operating efficiently and carrying out its mandate for public protection effectively. However, due to the concerns raised by a significant number of applicants in regard to the board's oral examination, and to a lesser extent, by some licensees regarding its enforcement activities, the Joint Committee may wish to revisit these aspects of the Board program fairly soon. Additional discussion of the oral examination and enforcement issues follows.

### **ISSUE #3. Should the composition of the Board of Behavioral Sciences be changed?**

**Recommendation:** *Both the Department and Committee staff recommended retaining the current statutory composition of the Board of Behavioral Sciences.*

**Vote:** *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

**Comment:** The 11-member Board of Behavioral Sciences comprises a majority of 6-public members, and 2-MFCC's, 2-LCSW's, and 1-LEP. The Department and Committee staff views this as an appropriate mix of public and professional members.

### **ISSUE #4. Should the oral examinations required by the Board of Behavioral Sciences be eliminated?**

**Recommendation:** *Both the Department and Committee staff recommended continuation of the use of oral examinations by the Board of Behavioral Sciences, but that the Board continue to review and validate the integrity of its examinations. The Board should also conduct an assessment of all the possible causes of the low pass rate for its exams (see discussion below). Committee staff also recommended a subsequent review of the Board's examination program within two years.*

**Vote:** *The Joint Committee did not adopt the recommendation of the Department and Committee staff as it concerned the Licensed Clinical Social Worker's (LCSWs) oral examination. The Joint Committee adopted a substitute recommendation, by a vote of 5-1, to eliminate the current oral examination [for LCSWs by January 1, 1999], and for the Board of Behavioral Sciences to come back to the Legislature within one year with a proposal to include the material on the oral exam within a degree program and under supervised conditions, etc.*

**Comment:** The Board of Behavioral Sciences oral examinations have been the subject of intense criticism, particularly from candidates for LCSW licensure who have failed. They have alleged that the examination (and any oral examination) is inherently subjective in both content and administration, that it does not reflect or measure their professional preparation and experience adequately, and that the oral examination process is biased. They have also argued that the low pass rate (consistently in the middle-30 percent range over the last few years, and substantially lower since the examination was standardized in 1992) conclusively demonstrates that the oral examination is not a valid testing tool.

The Board disagrees, asserting that the oral examination is defensible and that there may be other reasons for the low passage rate such as: (1) gaps in candidates professional education or supervised experience, (2) changes in the profession that create significantly different types of practice settings and experience, (3) changes in state and federal laws that now require practitioners to be licensed who were previously exempt from the licensure requirement.

It should be noted, that the California license does not differentiate among practice settings -- the law allows practitioners to practice in private, independent settings as well as supervised institutional settings (private or public), such as county mental health facilities or correctional facilities. Accordingly, candidates whose professional preparation or subsequent work experience may have been narrowly focused, may very well have difficulty with a broad based oral examination.

The Board has provided extensive documentation regarding its oral examination, including: (1) assessment from the DCA Office of Examination Resources that the oral examination is occupationally relevant and psychometrically defensible; and, (2) a survey of expert examiners, which indicates that the pool of examiners reflects the diversity of the general California population and the licensure candidate population. An adverse impact study is under way to determine whether the oral examination is biased, and may cause a disadvantage to ethnic or linguistic minorities, older or younger applicants, or male or female applicants.

Those who strenuously advocate elimination of the oral examination have provided substantially less hard evidence to bolster their case, though one study (conducted under contract to a professional organization that represents both licensees and candidates) has been offered that challenges the occupational validity and testing methodology. Moreover, the low pass rate remains enigmatic, in view of the candidates' extensive academic preparation and supervised experience.

While the issue was debated extensively in 1997, in the context of SB 288 (Haynes), which is now pending in the Assembly policy committee, huge variance remains between those who argue that the examination serves the purpose of public protection, by screening out applicants whose professional preparation or skills are deficient, and those who argue that an arbitrary and unfair oral examination prevents qualified applicants from practicing their chosen profession.

Given the serious and sensitive nature of the practice of the Board's licensees, the Department and Committee staff are reluctant to recommend abandoning any examination, or other licensing/screening device, whose primary purpose is to prevent unqualified candidates from

practicing with a general license that authorizes professional interaction with highly vulnerable clients in private, independent practice.